



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Yale Materials Handling Corporation
File: B-228974.2
Date: December 3, 1987

DIGEST

1. Where descriptive literature indicates that specifications are subject to change, bid need not be rejected as nonresponsive if provision is immediately followed by contradicting handwritten statement that all specifications will be met.

2. Where an invitation for bids required the submission of descriptive literature to establish conformance with the material specifications of the solicitation, a bid must be rejected as nonresponsive if the literature evidences nonconformity with the specifications.

DECISION

Yale Materials Handling Corporation protests the award of a contract to Big Joe Manufacturing Company under invitation for bids (IFB) No. DAAC79-87-B-0120, issued by the Red River Army Depot for stock selector trucks. Yale contends that the contracting officer incorrectly rejected its bid as nonresponsive.

We dismiss the protest.

The solicitation required that bidders submit with their bids descriptive literature establishing details of the product offered. The IFB stated that the failure of the descriptive literature to show that the product offered conforms to the requirements of this solicitation would require rejection of the bid.

Yale submitted standard descriptive literature which contained a statement that specifications were subject to change without notice. However, Yale inserted after that statement, in handwriting, "but we will meet all requirements of your spec as quoted." The contracting officer

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decided that the inclusion of this language in Yale's descriptive literature indicated that a firm bid had not been submitted and that the bidder had reserved the right to change specifications. He also found that the descriptive literature indicated that Yale's bid did not comply with two requirements in the solicitation. Accordingly, he found Yale's bid to be nonresponsive.

Yale argues that by modifying its statement that specifications were subject to change with the words "but we will meet all requirements of your spec as quoted," it unequivocally indicated that it meant to comply with the solicitation's requirements.

We have generally held that the reservation in descriptive literature of the right to alter specifications renders a bid nonresponsive. North Park Village Homes, Inc., B-216862, Jan. 31, 1985, 85-1 C.P.D. ¶ 129. Where, however, it is reasonably clear from the face of the bid that such a provision was not intended to reserve a right to change the offered product or to deviate from any material requirement, bid rejection is inappropriate. Id. In a similar case, where a firm discussed its descriptive literature in a cover letter and stated that all equipment would meet the specifications, we held that the cover letter negated the "subject to change clause." Waukesha Motor Co., B-178494, June 18, 1974, 74-1 C.P.D. ¶ 329. Here, Yale contradicted the "subject to change" language at the same place in the descriptive literature where the language appeared, effectively deleting the language from the bid. Thus the agency incorrectly declared Yale's bid nonresponsive for this reason.

We agree, however, that Yale's bid should be rejected because its descriptive literature indicates noncompliance with certain requirements of the solicitation. The IFB requires that the trucks have two fluorescent lights, two hand adjustable sealed beam spotlights, a single hand adjustable spotlight, and a red rotating beacon light. Yale's descriptive literature shows only a dome light and two spotlights. Yale does not argue that its literature complies with the specification, or even that Yale would comply with the specification notwithstanding its literature. Rather, Yale states that its dome light (which contains two incandescent bulbs), would illuminate the platform as well or better than fluorescent lights.

In addition, the Army rejected Yale's bid because the IFB required that the truck lift to 180 inches, and Yale's descriptive literature stated that its truck would stop travel at 150 inches of fork height. Yale argues in its protest letter that its submitted literature also states

that travel with fork height in excess of 150 inches is available if the capacity of the truck were reduced, and that the 3000 pound truck offered by Yale had a lot of room for capacity reduction before it reached the 2000 pound capacity required by the Army. Indeed, Yale explains, the truck could lift to 180 inches at 2800 pounds, which is 800 pounds more than the 2000 pound capacity truck required by the specifications.

Yale contends that the agency should have consulted Yale before rejecting its bid. We have consistently held, however, that conformance to the IFB requirements must be determined from the face of the bid itself without resort to explanations furnished after bid opening. Le Prix Electrical Distributors, Ltd., B-212518, Dec. 27, 1983, 84-1 C.P.D. ¶ 26. Yale's descriptive literature accompanying its bid is at best ambiguous with respect to this portion of the specification and therefore the bid is nonresponsive and cannot be accepted. NJCT Corp., B-216919, Jan. 11, 1985, 85-1 C.P.D. ¶ 33.

The protest is dismissed.



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